IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5658 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHATT VIMALKUMAR VASANTRAI

Versus

COLLECTOR

Appearance:

MR PM THAKKAR for Petitioner

MR MUKESH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/03/2001

ORAL JUDGEMENT

#. Heard the learned counsel Ms.Sangita Pahva and learned AGP Mr.Mukesh Patel, for the respondents.

#. By way of this petition under 14, 16 and 226 of the Constitution the petitioner has challenged the legality

of the order of the respondents dated 20.10.1987 whereby he was discharged from his service as a Clerk in the Mid-day Meal Scheme pursuant to an order of Assistant Collector 17.10.1987. It is the case of the petitioner that after an interview and process of selection, he was appointed as a temporary organiser of Mid-day Meal Scheme in January, 1985. During the course of his service the petitioner came across several instances of alleged irregularity and corrupt practices and having raised his voice and ventilated his grievances in unison with other organizers, some officer had come to be transferred. Against this backdrop of facts a punitive order terminating the service of the petitioner was issued without holding any departmental inquiry or giving a reasonable opportunity of hearing. It is also submitted that the order terminating services of the petitioner was in violation of the provisions of Section 25F of the Industrial Dispute Act, 1947 and therefore illegal and void.

#. On the basis of affidavit-in-reply of the Assistant Collector, it was submitted on behalf of the respondents that the petitioner was not a workman and his appointment was of purely temporary nature on a fixed honorarium on a part-time basis. That according to the agreed terms of such appointment, it was liable to be terminated at any time without notice and in any case at the end of the academic year. It was also submitted that complaints were received against the petitioner and after due deliberation and careful consideration, it was decided to discontinue the service of the petitioner in the interest of administration and school children. It was further submitted that, even assuming the provisions of Industrial Dispute Act to be applicable, the appropriate course for the petitioner was to approach the Labour Court after raising an industrial dispute and the petition was liable to be dismissed only on the ground of appropriate alternative remedy.

#. Considering the material on record and contentions of the parties it appears that the order under which the petitioner was serving under the respondent at the time of the termination of his service expressly contained the condition of the appointment being purely temporary on an honorarium of Rs.200/-p.m. for a period till the vacation without any right for further appointment after the vacation. By virtue of such order, a copy of which is at Annexure-K, 81 such organizers were appointed on the same terms and conditions. It is not the case of the respondents that the petitioner was allowed to complete the term of appointment but, instead, it is submitted

that the termination was in exercise of power reserved in condition no.4 of the order. That condition stipulated that in case of any irregularity or misconduct, the appointee would be liable to be discharged without notice. Before passing the impugned order containing express allegations of misbehavior and misconduct, admittedly no departmental inquiry worth the name was held. It is nowhere stated as to how even a semblance of opportunity of hearing was given to the petitioner. Thus, it is clear from the record that, the petitioner had been discharged from service as a measure of punishment without affording any opportunity of being heard. Even assuming that the power to do so was reserved in terms of the appointment order, the action of respondent has to be held to be arbitrary and in violation of the principles of natural justice.

#. In this view of the matter, the impugned order terminating the service of the petitioner is required to be set aside and it is not necessary to enter into the issue as to whether the provisions of Industrial Disputes Act, 1947 were applicable in the facts of the case and, therefore, no question of having any alternative remedy survives. The necessary consequence of setting aside the order of termination would be an order of reinstatement and the payment of wages due. In view of the appointment of the petitioner being temporary, part time and for a limited period, even in absence of the order of termination, it would have expired at the end of the academic year. therefore, the petitioner would be entitled to full wages described as honorarium upto the end of term which would have admittedly expired by the end of April, 1988.

#. In the result, the petition is allowed and the respondents are ordered to pay to the petitioner the honorarium due at the rate of Rs.200/- p.m. since 20.10.1987 till 30.4.1988 within one month of the receipt of writ of this order. Rule is made absolute in terms as above with no order as to costs.

(D. H. WAGHELA, J.)
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